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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 FLINT CPS INKS NORTH AMERICA,
7 LLC,

Case No. 3:20-cv-00208-MMD-CLB

8 Plaintiff,

ORDER

9 v.

10 TREND OFFSET PRINTING SERVICES,
11 INC. and DOES 1 through 10, inclusive,

Defendants.

12 Plaintiff Flint CPS Inks North America, LLC as successor in interest to Flint Group
13 North America Corporation ("Flint Group") has filed a motion for writ of possession
14 pursuant to NRS § 31.840, *et seq.* and Fed. R. Civ. P. 64 and seeks emergency relief
15 ("Motion") (ECF No. 3.) As to the latter, Flint Group specifically requests that the Court
16 issues an *ex parte* temporary restraining order ("TRO") restraining Defendant Trend Offset
17 Printing Services, Inc. ("Trend Offset") from using, dissipating, transferring, or otherwise
18 disposing of printing ink and related materials ("Consigned Goods") which Flint Group
19 alleges it owns.¹ (*Id.* at 2, 10–11.) The Court finds that Flint Group fails to meet the heavy
20 burden of showing that it is entitled to the extreme relief of an *ex parte* TRO and will
21 therefore deny its request for such.

22 Federal Rule of Civil Procedure 65 governs *ex parte* TROs, and requires that a
23 motion for a TRO without notice include "specific facts in an affidavit or a verified complaint
24 [that] clearly show that immediate and irreparable injury, loss, or damage will result to the
25 movant before the adverse party can be heard in opposition," as well as written certification
26 from the movant's attorney stating "any efforts made to give notice and the reasons why it
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28 ¹Perhaps by error, the emergency relief is requested pursuant to both Cal. Civ.
Proc. Code § 513.010(b) and NRS § 31.859. (ECF No. 3 at 2, 10–11.)

1 should not be required.” Fed. R. Civ. P. 65(b)(1). TROs are governed by the same
2 standard applicable to preliminary injunctions. See *Stuhlbarg Int’l Sales Co. v. John D.*
3 *Brush & Co.*, 240 F. 3d 832, 839 n.7 (9th Cir. 2001). A TRO may be issued if a plaintiff
4 establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in
5 the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4)
6 that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
7 7, 20 (2008). The Ninth Circuit has also held that “serious questions going to the merits’
8 and a hardship balance that tips sharply toward the plaintiff can support issuance of an
9 injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for*
10 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

11 Flint Group has not satisfied the requirements for a TRO. Here, Flint Group
12 contends that a TRO is necessary based on the language in NRS § 31.859. (ECF No. 3
13 at 10.) That section is titled: “Temporary restraining order in lieu of immediate issue of writ
14 of possession.” See NRS § 31.859. It specifically states that a “court may issue such
15 temporary restraining orders directed to the defendant prohibiting such acts with respect
16 to the property as may appear necessary for the preservation of rights of the parties and
17 the status of the property.” *Id.* Nothing in this section suggests that Flint Group is excused
18 from demonstrating that a TRO is necessary per a showing of the *Winters* factors, which
19 Flint Group completely fails to argue here.

20 To be sure, applying the *Winter* factors, it is not clear what irreparable harm, if any,
21 would occur absent a TRO. In fact, it appears that compensatory relief would ultimately
22 be adequate in this action—as highly suggested by the admitted filing of a similar, and
23 apparently principal, action in in the United States District Court for the Central District of
24 California requesting such relief (see, e.g., ECF No. 3 at 4 n.1; ECF No. 1 at 4 n.2). See
25 *Flint CPS Inks N. Am., LLC v. Trend Offset Printing Servs., Inc.*, Case No. 8:20-cv-00651
26 (C.D. Cal., filed April 2, 2020). Of course, the adequacy of compensatory relief weighs
27 heavily against a finding of irreparable harm. See *Sampson v. Murray*, 415 U.S. 61, 90
28 (1974). There is also no actual evidence that Trend Offset has specifically threatened to

1 use, dissipate, transfer, or otherwise dispose of the Consigned Goods as the basis for the
2 TRO suggests. The letter from Trend Offset's counsel, which Flint Group appears to find
3 threatening, merely purports to bar Flint Group from entering Trend Offset property to
4 retrieve the Consigned Goods in the interim and under the threat of potential civil and/or
5 criminal penalty. (See ECF No. 1-8.)

6 Based on the Motion, it is also unclear whether Flint Group will be able to satisfy
7 the other *Winter* factors: it has not demonstrated a likelihood of success on its relevant
8 claim and delivery allegations (ECF No. 1 at 8–9),² or that the equities and the public
9 interest would favor a TRO. See *Winter*, 555 U.S. at 20. Because Flint Group has not
10 established the *Winter* factors, it has not shown it is entitled to a TRO, let alone without
11 notice to Trend Offset.

12 It is therefore ordered that Flint Group's motion for a temporary restraining order
13 (ECF No. 3) is denied. The Court defers a ruling on the writ of possession until that issue
14 is fully briefed.

15 DATED THIS 7th day of April 2020.

16
17 

18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE

20 ²Particularly concerning for the Court is whether Flint Group would be able to
21 establish NRS § 31.850(1)'s requisite showings in light of the disjunctive language in the
22 contract that Flint Group relies on to argue that it owns the Consigned Goods. Specifically,
the contract provides:

23 Ownership. Flint Group shall continue to be the owner of the Consigned
24 Goods and hold legal title to same until such time as the earlier of when
Purchaser *uses* the Consigned Goods *or* pays Flint Group in full for them.
25 Purchaser shall not pledge or grant any security interest in or to the
Consigned Goods unless and until they have been purchased by Purchaser.

26 (ECF No. 1-3 at 3 §1.3(b) (emphasis added).) This language suggests that Trend Offset
27 may very well own the Consigned Goods, so long as it uses it, and then all that is left is
28 for Flint Group to be compensated for such use. But NRS § 31.850(1) specifically requires
that Flint Group must show that it is the owner of the property claimed or that it is lawfully
entitled to the possession of it. However, the Court is not fully convinced that this showing
is likely met in light of the contractual language and the uncertainty of what remains of the
Consigned Goods.